



**MINUTES OF THE MEETING OF THE
LEON VALLEY ZONING COMMISSION**

January 7, 2014

The Special Meeting of the Leon Valley Zoning Commission convened at 6:30 p.m. on Tuesday, January 7, 2014, in City Council Chambers at 6400 El Verde Road, Leon Valley, Texas.

I. ROLL CALL

Present were Chairman Claude Guerra III, 1st Vice-Chair Wendy Phelps, 2nd Vice-Chair Olen Yarnell, and Members Pedro Esquivel, Carmen Sanchez, and Alternate Members Phyllis McMillan and Carlos Fernandez. Absent and properly excused were, Member Hal Burnside and Alternate Member Nicole Monsibais. Also present was Kristie Flores, Director of Community Development, acting as recording secretary.

Commissioner Phyllis McMillan was seated as a voting Member in the absence of Commissioner Hal Burnside.

II. APPROVAL OF MINUTES – December 3, 2013

2nd Vice-Chair Olen Yarnell made a motion to approve the minutes of December 3, 2013 as written. 1st Vice-Chair Wendy Phelps seconded the motion, and the motion passed unanimously by voice vote.

(At this time, Commissioner Mike Davis Jr., arrived at the meeting as noted for the record by Chairman Guerra III.)

III. CONSIDER AN AMENDMENT TO CHAPTER 14, "ZONING," ARTICLE 14.02, "ZONING ORDINANCE" SECTION 14.02.501, "LANDSCAPING," SUBSECTION (j), "TREE PRESERVATION," TO REMOVE SUBSECTION (j) IN ITS ENTIRETY FROM THE ZONING ORDINANCE

A. Public Hearing

B. Zoning Commission Recommendation

Chairman Claude Guerra III opened the discussion of the proposed zoning amendment at 6:34p.m. Staff presented the details noting that the zoning amendment to remove the tree preservation regulations from the zoning ordinance was continued business of the Commission as the result of a zoning amendment presented to the Commission in October 2013 which would alter the language of the zoning ordinance to give authority to the Tree Advisory Board (TAB), instead of the Board of Adjustment (BOA) to review tree variance requests and then forward their recommendation to City Council; much like the process followed by the Zoning Commission. Staff indicated that the biggest difference was that the Board of Adjustment was quasi-judicial and their decision would be final and would not go to the City Council and could only be appealed to a court of law. Staff noted that at the meeting of October 29th the Zoning Commission recommended approval of the zoning amendment directing that variances regarding trees would first be considered and recommended upon by the TAB and then forwarded to Council for final determination. Staff explained that in the discussion of the Commission that evening the Commission felt that it was a logical progression for the TAB to consider such requests and then forward them to Council especially with their knowledge of trees, the fact that they had been appointed by Council to be stewards for trees in the City and also had regular assistance by Certified Arborist and the Texas Forest Service. Staff then noted that when the amendment was forwarded for consideration by Council in November, when it was screened by the

City Attorney, it was noted that per State law only the Board of Adjustment could consider variances in the Zoning Code. Further it was noted that the language in the Zoning Code could not be arbitrarily changed to direct a different reviewing body. Staff explained that this was why the Commission was meeting again in order to properly amend the zoning ordinance in such a way as to legally allow tree variances to be considered by the TAB and then be forwarded to City Council. Staff noted that the city attorney had offered two (2) options: 1) create an entirely new section for "tree preservation," or 2) add the "tree preservation" section to the Subdivision Ordinance. Staff explained that the first suggestion was followed because it was easier in staff's opinion to create a new ordinance rather than add to an already existing code which was already properly intact. Staff stated that the legal protocol was followed for consideration of the zoning amendment as follows: it was published in newspaper of general circulation (10 days prior), the agenda was posted (more than 72 hours prior), the Zoning Commission was attending to the discussion of the matter and the public hearing which would result in a recommendation that would be forwarded to Council for final determination.

Staff then reviewed the proposed new Chapter 15, "Tree Preservation," noting that the entire tree preservation section was simply cut from Chapter 14, "Zoning Ordinance," and was pasted to a new document to create Chapter 15. Staff further explained that the only changes made were to numbering and any references to "zoning" or "Zoning Administrator" which were replaced with "code" and "Community Development Director." Staff also noted that the section pertaining to tree variances reflected the language that the Commission had previously seen for the initial zoning amendment request.

Commissioner Phyllis McMillan asked how the proposal to change the reviewing Board for tree variances occurred. Staff noted that in reviewing the tree preservation regulations for meetings with the Tree Advisory Board and considering tree permit removals staff recalled a similar situation that arose with a sign variance request that was part of the zoning overlay that could only be considered by the Board of Adjustment (BOA). Staff explained that because the BOA is a quasi-judicial Board their decisions could only be appealed to a court of law. So as a result, staff initiated the present amendment so that the Tree Advisory Board, the stewards of the City's trees could make a recommendation to the City Council for final determination which was the same as the format that the Zoning Commission followed.

2nd Vice-Chair Olen Yarnell asked that if the TAB was the City's experts for trees then who could they not enter into the process some point early on when the variance is requested to review the request and forward their recommendation to the Board of Adjustment just as the Zoning Commission receives information from staff and other experts for the consideration of cases. He noted that the Board of Adjustment could then utilize the information during their discussion. He also noted that if the variance was not approved and needed to be appealed to a court, then that is what is required by law for due process.

Commissioner Phyllis McMillan asked if there were any pending tree variance cases or any that were coming up. Staff noted that there were no pending cases and the only potential cases may be Ancira and the Bexar County Flood Management Project (LC-17) where the County is expanding the creek along El Verde Road.

2nd Vice-Chair Olen Yarnell noted that he does not see any haste in getting the item addressed. He noted that in his opinion the amendment is not an emergency and he is weary of such quick actions by staff for reasons that he does not feel are valid. He explained that to him the meeting could have waited until the regular meeting date.

Commissioner Mike Davis Jr., noted that it was his opinion that the meeting was improperly called. He noted that the Commission are all volunteers and are accustomed to a regular date and when special meetings are called there are members that cannot attend. He explained that he has always noted his concerns regarding meetings outside of the regularly scheduled meetings. He further stated

that he felt the amendment was a work in progress from a draft. He also noted that he felt that staff did not follow the protocol outlined in the Code, where only the Chairman can call the meeting.

Staff noted that Mr. Davis Jr., noted his concerns before the meeting and that the staff received the legal counsel and direction of the City Attorney that the meeting was legal and could be held in the presence of a quorum and posted agenda. Staff noted that the zoning amendment was published in the newspaper as prescribed by law and the agenda was posted 72 hours in advance of the meeting.

Commissioner Pedro Esquivel noted that the Chairman obviously agreed to the meeting and the meeting could properly be held per the City Attorney. He noted that it is the Chair's decision whether to follow through with Commission business.

Commissioner Carmen Sanchez noted the attorney advised that the meeting was legal and the amendment could be considered and noted that she did not see why they could not proceed with the item at hand.

Commissioner Davis Jr., asked what happened if the Zoning Commission approved the request as it was on the agenda just removing the section. His concern was that there would be no tree preservation regulations and if the Council did not approve Chapter 15, then there were no protections for trees in the City.

Commissioner Pedro Esquivel noted that the removing of the section and creation of the new Chapter as was being discussed in the meeting was logical and one action was inclusive of the other as the recommendation of the Commission.

Being no further discussion, Chairman Guerra III opened the public hearing at 7:24p.m.

Monica Alcocer, 5985 Aids Drive, addressed the Commission and noted that the City was rushing things and explained that there were other instances such as the hike and bike meeting on Thursday when residents would be given two (2) alternatives and it appeared that the proposed trail was already approved and would go through the natural area with a large concrete trail. She explained that she felt the Commission could wait on the amendment until it was necessary and that the amendment should not be added to the Monday Council meeting.

Patty Manea, 6103 Britania Court, addressed the Commission and noted that she too had concerns about the hike and bike trail and noted that trees in the City needed to be protected. She asked why Tree City USA signs had not been installed in the City as it was difficult to get the designation and it should be displayed. Staff noted that Public Works was working on the installation.

Ms. Manea encouraged the City to look at the policies for Balcones and Alamo Heights and then make a recommendation. She noted that she hoped the Commission would not be hasty in the process.

Being no further discussion, the public hearing was closed at 7:32 p.m.

Staff noted that the zoning amendment was not associated with the hike and bike trail and noted that the hike and bike trail alternative that was selected would be a Council action and staff was not sure that a tree variance would be required as part of that action.

Commissioner Phyllis McMillan asked if the Tree Advisory Board was statutory and if not why tree variance requests could not continue to be considered by the Board of Adjustment. Staff noted that the TAB was not a statutory Board and that the Board of Adjustment (BOA) could remain the deciding body but they would be unaccustomed to hearing such requests. Staff explained that the Tree

Advisory Board has Members that have arbor and forestry backgrounds and experience, and BOA decisions could only be appealed to a court of law.

Commissioner Pedro Esquivel recommended approval of the proposed zoning amendment to remove the tree preservation regulations from the Zoning Ordinance and create new and stand alone Chapter 15, "Tree Preservation." Commissioner Carmen Sanchez, seconded the motion and the motion passed by voice vote, 5-2.

IN FAVOR OF THE MOTION

Pedro Esquivel
Carmen Sanchez
Phyllis McMillan
Wendy Phelps
Claude Guerra III

OPPOSED TO THE MOTION

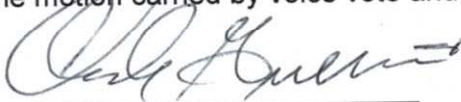
Mike Davis Jr.
Olen Yarnell

IV. EXECUTIVE SESSION IN ACCORDANCE WITH THE TEXAS LOCAL GOVERNMENT CODE

There was neither item, nor action necessary for this session.

VI. ADJOURN

Commissioner Pedro Esquivel made a motion to adjourn, seconded by 2nd Vice-Chair Olen Yarnell. The motion carried by voice vote and the meeting was adjourned at 7:45 p.m.



CHAIR



STAFF